Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 703 of 2002 (S/B)

Nand Lal Verma …….. Petitioner

Versus

Director of Local Bodies,
Uttaranchal and others …….. Respondents

Mr. K.N. Joshi, learned counsel for the petitioner.
Mr. N.C. Gupta, learned Standing Counsel for the State.
Mr. D.S. Patni, learned counsel for the respondent No. 3 & 4.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner ahs sought writ in the nature of certiorari for quashing the order dated 02.01.2002 issued by the respondent No. 3 i.e. Executive Officer, Nagar Palika Parisha, Nainital regarding retirement of the petitioner, and order dated 26.07.2002 passed by the District Magistrate / Administrator, Nagar Palika Parishad, Nainital whereby representation of the petitioner has been rejected.

2) Brief facts of the case, as narrated in the writ petition, are that petitioner was initially appointed in the year 1967 on the post of Clerk Grade- B with the Nagar Paliak Parishad, Nainital and later on promoted to the post of Clerk Grade- A w.e.f 01.07.1973. According to the petitioner he was entitled to continue in the service up to the age of 60 years, as per Rule 3 of the Rules of 1965 framed under the U.P. Municipalities Act, 1916. However, in the year 1990 options were invited from the employees of the Nagar Palika Parishad, as to willingness to retire at the age of 58 years. Many of the employees including the petitioner gave option for retirement at the age of 58 years for certain pecuniary

and pensionary benefits. But later on, the petitioner realized that he is not going to be benefited by said option and sought to withdraw the option. The petitioner has alleged that the denial on the part of the respondents to permit the petitioner to withdraw his option and making him to retire at the age of 58 years is illegal and violative of provisions of law. He has further alleged that an option was given in a mistaken impression of law cannot be said to be a valid option. The petitioner appears to have made representation in this regard and that too has been rejected vide order 26.07.2002 (Annexure- II to affidavit filed with interim relief application dated 11.09.2002) and the rejection has also been challenged in this writ petition, alongwith the notice of retirement.

3) Respondent No. 3 filed his counter affidavit in which it has been stated that in pursuance to the Government Order dated 13.02.1990 the petitioner opted on 21.03.1990. for his retirement at the age of 58 years i.e. on 30.06.2002, as such there is no illegality in the impugned notice dated 02.01.2002. However, it is not disputed in the counter affidavit that the petitioner was appointed as Clerk Grade- B and that he was promoted to Clerk Grade- A in the Nagar Palika Parishad, Nainital. But, it is stated in the counter affidavit that after taking benefit of the Government Order dated 13.02.1990, the petitioner is not entitled to withdraw the option for his retirement at the age of 58 years. The stand taken by the petitioner that he was under wrong impression is not true as he has taken the monetary benefits of the option.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexure annexed thereto.

5) The short question for consideration before this Court, is whether the petitioner is wrongly denied continuance in service

beyond the age of 58 years by the respondents; and are the impugned order dated 02.01.2002 and 26.07.2002 liable to be quashed?

6) Admittedly, the petitioner was appointed as Clerk Grade- B in Nagar Palika Parishad, Nainital in the year 1967 and later on promoted to the post of Clerk Grade- A with effect from 01.07.1973. There is no dispute as to his date of birth. The only controversy relates to the point whether the petitioner was rightly made to retire on attaining the age of 58 years or as he entitled to be in the service till the age of 60 years. Before further discussion, it is pertinent to mention here that admittedly the age of retirement of the Nagar Palika employees, in view of sub-clause 1 of Rule 3 of the Rules framed and notified on 11th June 1965 under U.P. Municipalities Act, 1916, is 60 years. But it is also not disputed that vide Government Order number वे0 आ0–2–315/10–स्था0 नि0– 3–89 dated 13th February, 1990 which was issued by the department of the Local Bodies of the State Government providing the scheme to the employees of the retirement at the age of 58 years whereby an offer was made for certain pecuniary benefits to the employees. Admittedly, the petitioner gave his option for his retirement at the age of 58 years and availed the pecuniary benefits there under. Now he wants to withdraw the said option and to continue in service beyond the age of 58 years. In view of the principle of estopple, he cannot be permitted to do so after he has availed the pecuniary benefits from the Nagar Palika Parishad and the Government. Apart from this, had there been a case where immediately after option, petitioner had opted to withdraw the same he could have been allowed with the condition that he would deposit the amount received as pecuniary benefits, in the public exchequer. But from the year 1990 till the year 2002, it appears that for 12 long years the petitioner slept over and enjoyed the pecuniary benefits and it is only when he received the impugned notice dated

02.01.2002 intimating him that he has to retire on 30.06.2002, the petitioner has woken up. In the circumstances of the case and as the position of law exists, now, withdrawal of the option cannot be permitted. Learned counsel for the petitioner drew my attention to his rejoinder affidavit and the judgment dated 19.04.2004 passed by the Division Bench of this Court in writ petition 348 (S/B) of 2002 in the case of Gusain Ram V. State of Uttaranchal and others, and claimed the parity. I have gone through the said judgment. The last sentence of the judgment reads as: *"It will not be treated as precedent."* That being so, the said judgment cannot be treated precedent for permitting one and all to withdraw their options and to create chaos in the matter of retirement of employees of the local bodies.

8) In the circumstances and in view of the above discussion, this Court is not inclined to interfere with the impugned order dated 02.01.2002 passed by the Executive Officer, Nagar Palika Parishad, Nainital or the one dated 26.07.2002 passed by the District Magistrate / Administrator, Nainital. As such the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 1st November, 2004
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